

Internal Revenue Service

Number: **201407005**

Release Date: 2/14/2014

Index Number: 355.00-00, 355.01-00,
355.03-00, 368.04-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:3

PLR-121146-13

Date:

November 13, 2013

Legend

Parent =

Operating Partnership =

Distributing =

Controlled =

Partnership A1 =

Partnership A2 =

Partnership B1 =

Partnership B2 =

Partnership B3 =

Partnership B4 =

Partnership B5 =

Partnership B6 =

Asset A =

Asset B =

Business A =

Business B =

Corporate Business Purposes =

State A =

State B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

Dear :

This letter responds to your May 3, 2013 request for rulings regarding certain federal income tax consequences of the proposed transaction described below. The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. Moreover, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Proposed Transactions (defined below): (i) satisfy the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) are used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) of the Internal Revenue Code (the “Code”)) and § 1.355-2(d), or (iii) are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a fifty percent or greater interest in any of the distributing corporation or the controlled corporation (see section 355(e)(2)(A)(ii) and § 1.355-7).

SUMMARY OF FACTS

Parent is a widely-held and publicly-traded State A statutory real estate investment trust that has elected to be treated, since Date 1, as a real estate investment trust under section 856 (a “REIT”). Parent owns the general partner interest and a percent of the limited partner interests in Operating Partnership, a State B limited partnership. Distributing is a State B corporation that has elected to be treated as a REIT since Date 2. Distributing has one class of stock, comprised of e outstanding common shares, owned b percent by Operating Partnership and c percent by d other shareholders. Operating Partnership acquired direct and indirect ownership of substantially all of the stock of Distributing on Date 3 (more than 5 years ago).

Distributing directly owns f percent of the interests in Partnership A1, a State B limited partnership. Partnership A1 directly owns g percent of the interests in Partnership A2, a State B limited partnership. The remaining interests in Partnership A1 and h percent of the interests in Partnership A2 are owned by taxable REIT subsidiaries (within the meaning of section 856(l)) (each, a “taxable REIT subsidiary”), each of which is wholly and directly owned by Distributing. The remaining interests in Partnership A2 are owned by one or more unrelated persons. Partnership A2 owns Asset A through multiple entities, each of which is disregarded as separate from its owner under §§ 301.7701-1, *et seq.* (a “disregarded entity”), and thus are treated as a branch or division of Partnership A2.

Distributing directly owns j percent of the interests in each of Partnership B1, Partnership B2, and Partnership B3, which are State B limited partnerships. The remaining interests in each of Partnership B1, Partnership B2, and Partnership B3 are owned by taxable REIT subsidiaries, each of which is wholly and directly owned by Distributing. Partnership B1, Partnership B2, and Partnership B3, respectively, directly own j percent of the interests in Partnership B4, Partnership B5, and Partnership B6, which are State B limited partnerships. Taxable REIT subsidiaries, each wholly and directly owned by Distributing, collectively own k percent of the interests in Partnership B4, Partnership B5, and Partnership B6. The remaining interests in Partnership B4, Partnership B5, and Partnership B6 are owned by one or more unrelated persons. Partnership B4, Partnership B5, and Partnership B6 collectively own Asset B through multiple disregarded entities.

Around Date 4, Partnership B4, Partnership B5, and Partnership B6 collectively loaned \$l to Partnership A2 to supplement Partnership A2's cash reserves (the "Cash Reserves Loan"). The Cash Reserves Loan accrues interest at m percent per year and matures on Date 5. Distributing also owns a mortgage loan (the "Mortgage Loan") owed by Operating Partnership and secured by certain Operating Partnership assets.

Business A employees perform services for Asset A, and Business B employees perform services for Asset B. In addition, various employees of the Operating Partnership (the "Shared Employees") oversee certain activities and provide other managerial tasks with respect to both Asset A and Asset B.

PROPOSED TRANSACTIONS

For what are represented to be valid business reasons, Parent proposes to undertake the following steps (collectively, the "Transactions"):

- i. Distributing will form Controlled as a domestic limited liability company that will elect to be taxed from the date of its formation as a REIT under section 856(c)(1).
- ii. Distributing will transfer to Controlled: (a) all of its interests in Partnership B1, Partnership B2, and Partnership B3, (b) all of its stock in each taxable REIT subsidiary that directly or indirectly owns an interest in Partnership B1, Partnership B2, Partnership B3, Partnership B4, Partnership B5, or Partnership B6, (c) other assets associated with Asset B and Business B, and (d) an undivided interest in the Mortgage Loan, and Controlled will acquire the contributed assets subject to certain liabilities secured by Asset B (collectively with the contribution of assets, the "Contribution").
- iii. Controlled will have one class of common shares, and Controlled will issue all of such shares to Distributing. The number of such shares will equal the total number of outstanding Distributing common shares.

- iv. Distributing will distribute all of the stock of Controlled to its shareholders on a pro rata basis (the "Distribution").

Immediately after the Distribution, Distributing will conduct Business A and Controlled will conduct Business B.

REPRESENTATIONS

The following representations have been made regarding the Transactions:

- (a) Any indebtedness owed by Controlled (or any entity controlled directly or indirectly by Controlled) to Distributing after the Transactions will not constitute stock or securities.
- (b) No part of the consideration in the Distribution will be received by a Distributing shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (c) The five years of financial information submitted on behalf of Business A (as conducted by Partnership A2) is representative of the present operations of such business, and there have been no substantial operational changes in such business since the date of the last financial statements submitted.
- (d) The five years of financial information submitted on behalf of Business B (as conducted by Partnership B4, Partnership B5, and Partnership B6) is representative of the present operations of such business, and there have been no substantial operational changes in such business since the date of the last financial statements submitted.
- (e) Neither Business A, nor control of an entity conducting Business A, were acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized in whole or in part. Throughout the five-year period preceding the Distribution, Distributing (including one or more partnerships from which the trade or business assets and activities are attributed to Distributing) will have been the principal owner of the goodwill, if any, and significant assets of Business A and Distributing will continue to be the principal owner of the goodwill, if any, and significant assets of Business A following the Distribution.
- (f) Neither Business B, nor control of an entity conducting Business B, were acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized in whole or in part. Throughout the five-year period preceding the Distribution, Distributing

- (including one or more partnerships from which the trade or business assets and activities are attributed to Distributing) will have been the principal owner of the goodwill, if any, and significant assets of Business B and Controlled (including one or more partnerships from which the trade or business assets and activities will be attributed to Controlled) will be the principal owner of the goodwill, if any, and significant assets of Business B following the Distribution.
- (g) Following the Distribution, Distributing will continue the active conduct of Business A, independently and with its separate employees, and will continue to use the Shared Employees consistent with past practice.
 - (h) Following the Distribution, Controlled will continue the active conduct of Business B, independently and with its separate employees, and will continue to use the Shared Employees consistent with past practice.
 - (i) The Transactions will be carried out for the following corporate business purposes: Corporate Business Purposes. The Transactions are motivated, in whole or substantial part, by one or more of the corporate business purposes.
 - (j) The Transactions will not be used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
 - (k) The income tax liability for the taxable year in which investment credit property (including any building to which section 47(d) applies) is transferred will be adjusted to the extent required pursuant to section 50(a)(1) or (a)(2) (or section 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990)), if applicable.
 - (l) The total adjusted bases and the fair market value of the assets transferred by Distributing to Controlled in the Contribution will equal or exceed the amount of liabilities assumed (within the meaning of section 357(d)) by Controlled plus any liabilities to which the transferred assets are subject.
 - (m) The liabilities assumed in the Contribution and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.
 - (n) The total fair market value of the assets transferred to Controlled by Distributing in the Contribution will equal or exceed the sum of: (i) the amount of the liabilities assumed (within the meaning of section 357(d)) by Controlled in connection with the exchange, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the exchange, and (iii) the amount of any cash and the fair market value of any property (other than stock and securities permitted to be received

under section 361(a) without the recognition of gain) received by Distributing in connection with the exchange.

- (o) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.
- (p) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (q) Distributing and Controlled meet the requirements for the transaction to be considered a reorganization under section 368(a)(2)(F).
- (r) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing fifty percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or fifty percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (s) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing fifty percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or fifty percent or more of the total value of shares of all classes of Controlled stock, that was acquired by purchase (as defined in sections 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (t) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a fifty percent or greater interest (within the meaning of section 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (u) Immediately after the Distribution, either (i) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)), or (ii) if any person holds a fifty percent or greater interest (within the meaning of section 355(g)(3)) in any disqualified investment corporation, such person will have held such interest in such corporation (either directly or through attribution) immediately before the Distribution.

RULINGS

Based solely on the information submitted and the representations set forth above, we rule as follows regarding the Transactions:

- (1) The Contribution and the Distribution, taken together, will constitute a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled each will be a “party to a reorganization” within the meaning of section 368(b).
- (2) Distributing will not recognize any gain or loss on its transfer of assets to Controlled in exchange for Controlled stock and Controlled’s assumption of liabilities in the Contribution (sections 361(a) and 357(a)).
- (3) Controlled will not recognize any gain or loss on its receipt of assets from Distributing in exchange for Controlled stock and Controlled’s assumption of liabilities in the Contribution (section 1032(a)).
- (4) Controlled’s basis in each asset received from Distributing in the Contribution will equal the basis of that asset in the hands of Distributing immediately before the Contribution (section 362(b)).
- (5) Controlled’s holding period in each asset received from Distributing in the Contribution will include the period during which Distributing held that asset (section 1223(2)).
- (6) Distributing will not recognize any gain or loss upon its distribution of the stock of Controlled to its shareholders in the Distribution (section 361(c)).
- (7) Distributing’s shareholders will not recognize any gain or loss (and will not include any amount in income) upon receipt of Controlled stock from Distributing in the Distribution (section 355(a)(1)).
- (8) The basis of the Distributing stock and Controlled stock in the hands of each Distributing shareholder after the Distribution will equal the basis of the Distributing stock held by the shareholder immediately prior to the Distribution, allocated between the Distributing and Controlled stock in proportion to the fair market value of each immediately after the Distribution in accordance with § 1.358-2(a) (section 358(a)(1), (b) and (c)).
- (9) The holding period of the Controlled stock received by each Distributing shareholder in the Distribution will include the holding period of the Distributing stock on which the distribution is made, provided the Distributing stock is held as a capital asset on the date of the Distribution (section 1223(1)).

- (10) Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with section 312(h) and § 1.312-10(a).

CAVEATS

No opinion is expressed about the federal income tax treatment of the Proposed Transactions under other provisions of the Code or regulations or the federal income tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

- (i) Whether the Distribution satisfies the business purpose requirement of § 1.355-2(b);
- (ii) Whether the Transactions are used principally as a device for the distribution of the earnings and profits of the distributing corporation, the controlled corporation, or both (see section 355(a)(1)(B) and § 1.355-2(d));
- (iii) Whether any distribution and any acquisition or acquisitions are part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii);
- (iv) Whether Parent, Distributing, or Controlled qualifies as a REIT under part II of subchapter M of Chapter 1 of the Code; and
- (v) The federal income tax consequences under subchapter K of Chapter 1 of Subtitle A of the Internal Revenue Code on Distributing's transfer of its interests in Partnership B1, Partnership B2, or Partnership B3 to Controlled.

PROCEDURAL STATEMENTS

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income return for which it is relevant. Alternatively, any taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Pursuant to a Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Maury Passman
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel (Corporate)